

MARYANNE BEJUKI, Individually	:	CIVIL ACTION
and as Executrix of the Estate of	:	
Charles T. Bejuki, and	:	
JONATHAN BEJUKI, A Minor, by and	:	
through his natural parent,	:	
MARYANNE BEJUKI	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 96-1264
	:	
FRIENDS HOSPITAL,	:	
LANKENAU HOSPITAL,	:	
WAGNER & ASSOCIATES,	:	
ALAN MARKOWITZ,	:	
JOHN H.F. HAWKINS, M.D.,	:	
FRANKFORD HOSPITAL-	:	
TORRESDALE DIVISION, NEW ENGLAND	:	
MUTUAL LIFE INSURANCE CO.,	:	
ROBERT S. RAVETZ, D.O.,	:	
FRED GROSSMAN, D.O., and	:	
JANE AND JOHN DOES	:	
	:	
Defendants.	:	
	:	
	:	

Plaintiffs, Maryanne ("Mrs. Bejuki") and Jonathan Bejuki (collectively "Plaintiffs"), have brought this malpractice action on behalf of Charles Bejuki ("Mr. Bejuki"), their husband

and father respectively. Plaintiffs claim Defendants, various mental health care providers, negligently treated Mr. Bejuki for depression and that this negligent treatment lead to his eventual suicide.

Plaintiffs originally brought this action in the Philadelphia Court of Common Pleas. New England Mutual Life Insurance Company ("New England") and Keystone Healthplan East ("Keystone"), two health maintenance organizations ("HMOs"), were named as Defendants. Keystone removed the action to this Court claiming the existence of federal jurisdiction pursuant to section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"). 29 U.S.C. § 1132(a)(1)(B). Specifically, Mrs. Bejuki claimed that Defendant Dr. Robert S. Ravetz ("Ravetz") told her that he was discharging Mr. Bejuki from Friends Hospital, against his better judgment, because of the insurance company. Keystone argued, and this Court agreed, that Plaintiffs' case was "completely preempted" by ERISA because Plaintiffs were claiming Mr. Bejuki was denied a benefit due, extended hospitalization, under the terms of an ERISA qualified health care plan. Dukes v. U.S. Healthcare, 57 F.3d 350, 354 (3d Cir. 1995), cert. denied, 516 U.S. 1009 (1995).

Recently, Plaintiffs became aware that neither HMO had insisted on Mr. Bejuki's discharge. This is significant because it deprives this Court of jurisdiction. Plaintiffs no longer

claim that Mr. Bejuki was denied continued hospitalization but now claim that he was prematurely discharged by his treating physician. "Since complete preemption, and hence removal jurisdiction, is absent where an ERISA plan beneficiary or participant challenges the soundness of a medical decision made during the course of treatment, rather than the administrative denial of a medical benefit due under a plan, there is no complete preemption in this case." Miller v. Riddle Memorial Hospital, No. 98-392, 1998 WL 272167, at \*6 (E.D. Pa. May 28, 1998)(citing Lancaster v. Kaiser Foundation Health Plan of Mid-Atlantic States, Inc., 958 F. Supp. 1137, 1145 (E.D. Va. 1997)). Clearly, Plaintiffs' claim no longer falls into section 502(a)(1)(B) of ERISA, therefore, this matter must be remanded to the Philadelphia Court of Common Pleas.

An appropriate Order follows.

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FRED GROSSMAN, D.O., and  
JANE AND JOHN DOES  
  
Defendants.

AND NOW, this 17th day of July, 1998, upon consideration of Plaintiffs uncontested Motion to Remand, it is hereby ORDERED that said Motion is GRANTED. This matter is REMANDED to the Philadelphia Court of Common Pleas.

Robert F. Kelly, J.